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*Please respond to Quincy*

August 25, 2015

Board of Selectmen  
Town of Wayland  
Wayland Town Hall  
41 Cochituate Road  
Wayland, MA 01778-2614

School Committee  
Wayland Public Schools  
41 Cochituate Road  
Wayland, MA 01778

Dear Members of the Board of Selectmen and School Committee:

As you know, I have been retained to provide legal guidance concerning certain revolving accounts held by the Town Treasurer for the School Committee. Following is my legal analysis as to the statutory authority for the accounts in question. Also, based on a meeting with the Director of the Bureau of Accounts and his legal counsel, I have formulated recommended actions to assure that these accounts can be maintained in compliance with legal requirements as interpreted by the Bureau.

Scrutiny of the revolving accounts has been required due to a question as to whether the funds may be held separately from the Town general fund and expended without a town meeting appropriation. Specifically, the concern is that these funds can be so segregated and expended only under Section 71E of Chapter 71. Since this section of the law must be accepted by a Town and Wayland has not done so, there is a question whether the funds are being held illegally and should be placed in the Town's general fund.

In summary, most of these accounts can be maintained without town meeting approval with certain administrative actions under various sections of Chapter 71 of the Massachusetts General Laws. Acceptance of Section 71E at the upcoming Special Town Meeting is required only for two accounts. Finally, at the next Annual Town Meeting it will be necessary to establish a departmental revolving account. A description of each account and the actions(s) required with respect to its maintenance is included in the attached chart.

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Per our discussions with the Bureau of Accounts, the accounts, the current balances and ongoing receipts and expenditures from the accounts may be continued, provided that the Town pursues the recommended actions promptly.

Chapter 71E allows a school committee to segregate receipts from building use, adult education and continuing education programs and summer and community school programs and to expend them without town meeting appropriation.

As detailed below, it is my opinion that most of these accounts are not dependent upon the acceptance of Section 71E, as they can be maintained pursuant to other sections of Chapter 71. However, for the Property Use and Pegasus accounts, acceptance of Chapter 71, Section 71E should be pursued.

In addition to Section 71E, other sections of Chapter 71 allow the creation of a number of the accounts in question. These include: Sections 26A, 26B and 26C for funds received for extended day services; Section 37A for educational gifts and grants; Section 71C for community school programs; and Section 47 for a number of purposes as discussed in more detail below.

Section 26C provides for a separate account for contributions and fees from parents under Sections 26A to F of Chapter 71. Section 26A provides that a school committee may establish

“extended school services for children between three and fourteen years of age of parents who are employed and whose employment is determined by said committee to be necessary for the welfare of their families”<sup>1</sup>.

Section 47 of Chapter 71 permits separate funds for fee based programs for physical education, athletics, games and play and for

“receipts by the committee in connection with the conduct of activities provided for by this section or any other activity not expressly provided for in this chapter but sponsored by the school committee in which participation is contingent upon the payment of a fee by the participant”.

It is clear that a number of the funds referenced above are covered by Section 26B or Section 47, or the two sections in combination.

<sup>1</sup> The extended day programs must be approved by a vote of the Board of Selectmen and also approved by the Commissioner of Education.

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The Full Day Kindergarten, BASE (before and after school), The Children's Way, Global Language, Tutoring, and Enrichment accounts all entail "extended school services". Thus, these accounts may be maintained under Section 26C without regard to section 71E.

The four other accounts, Building Use, Pegasus, Professional Development and Curriculum must be analyzed. The issue is whether the programs run under these funds are "adult and continuing education", "summer school" or for "building use" under Section 71E, or whether they should be considered as other activities "not expressly provided for" in Chapter 71. Unfortunately there are neither administrative rulings nor court decisions which define these statutory terms. Would the Pegasus program be considered "summer school" under Chapter 71E or "games and play" or "other activities for ages" under Section 47? Are the professional development and curriculum programs "adult or continuing education" under Section 71E or "other activities" under Section 47?

Based on principles of statutory construction it is my opinion that proper legal analysis would favor an interpretation permitting these accounts under Section 47. The language "all other accounts" indicates an expansive intent in the reach of Section 47, where the exclusionary language of Section 47 for programs "expressly provided for" indicates a limited exclusion. Thus, in my opinion the Pegasus, Professional Development and Curriculum accounts should be considered as authorized under Section 47.

The final fund in question is Building Use. In my opinion this fund encompasses receipt and expenditures for "the use of school property under section 71" and Town Meeting acceptance of Chapter 71, Section 71E is necessary for this fund.

In addition to my legal review and opinion expressed above, we have had the opportunity to meet with the Director of Accounts and his General Counsel (the Bureau of accounts) on August 17, 2015.

Because the Bureau of Accounts is the final administrative authority on municipal financial issues, I felt it prudent to get their legal and practical guidance before making final recommendations on the steps necessary to assure that the School Department's revolving accounts fully comply with the law as administered by the Bureau of Accounts.

Although the legal conclusions stated above differ somewhat from the direction of the Bureau of Accounts, I do recommend that the Town proceed in accordance with the Bureau's guidance.

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With respect to several of the accounts, my legal opinion and the guidance of the Bureau coincide. The Bureau has indicated that the Full Day Kindergarten, Before and After School (BASE), The Children's Way, Global Language, Tutoring, and Enrichment Accounts may properly be maintained under Section 26C of Chapter 71. While certain administrative steps (outlined below) must be taken, town meeting action is not required for these accounts.

Regarding the Building Use Account, my legal opinion and the Bureau's guidance are the same, namely, acceptance of Section 71E of Chapter 71 is necessary to maintain this account.

The Bureau has also advised that acceptance of Section 71E is necessary to maintain the Pegasus Account, although they agreed that it is not an unreasonable argument that Pegasus could be maintained under Section 47. Nevertheless, with the need established to accept Section 71E for Building Use, doing so will resolve the question in favor of maintenance of the account under that section.

The final two accounts in question, Professional Development and Curriculum, were deemed by the Bureau not to fit into any of the categories of revolving accounts authorized under Chapter 71. Thus, per the Bureau, these accounts can be maintained only via establishment of a departmental revolving account under General Laws Chapter 44, Section 53E½. Since such action can be taken only at an annual town meeting, as opposed to a special town meeting, it is my recommendation that an article be presented to the Wayland Annual Town Meeting in the Spring.

Based on the above, I recommend that the following actions be taken for the accounts as indicated below.

1. Building Use and Pegasus

An article should be presented to the upcoming Special Town Meeting to accept Section 71E of Chapter 71. The article would take the following form:

*"Will the Town accept the provisions of Chapter 71, Section 71E so as to permit the maintenance of revolving funds as authorized by said section; or take any other action relative thereto?"*

2. Full Day Kindergarten, Before and After School (BASE), The Children's Way, Global Language, Tutoring, and Enrichment Accounts

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- a. The School Committee should adopt a plan for the extended school services provided via the Full Day Kindergarten, Before and After School (BASE), The Children's Way, Global Language, Tutoring, Enrichment and Full Day Kindergarten programs;
- b. the plan should be submitted to the Commissioner of Education for approval; and
- c. the School Committee should request the approval of the programs by the Board of Selectmen.

3. Professional Development and Curriculum Accounts

An article for these accounts to be maintained as departmental revolving accounts should be presented to the Annual Town Meeting in the Spring in accordance with Chapter 44, Section 53E½.

Pending action on the steps recommended above, per my opinion and the recommendation of the Bureau of Accounts, all of the accounts should continue to be held and administered as revolving accounts.

I hope the above provides the information needed by the Board and School Committee to resolve the status of the accounts in question. Please do not hesitate to contact me if you have any questions.

Very truly yours,

James A. Toomey

JAT\sd  
Enclosure doc #868818v1  
868767v1

Account/Purpose	Statutory Reference	Administrative Action Required:
<p><b><u>Before and After School Extension (BASE) Program</u></b>            BASE is a tuition-supported program for children in kindergarten through Grade 8, which is taught by teachers and assistant teachers, many of whom are certified. The FY15 enrollment is 450 student.</p>	M.G.L. c.71, §26A,B,C	1. School Committee to adopt plan/program; 2. Plan/program submitted to DESE for approval; and 3. Selectmen vote to approve plan/program
<p><b><u>The Children's Way (TCW)</u></b>            This preschool program provides services to children ages two through five years of age. Specialists in areas of Speech and Language, Inclusion, Occupational and Physical Therapy are part of the early childhood teaching team.</p>	M.G.L. c.71, §26A,B,C	1. School Committee to adopt plan/program; 2. Plan/program submitted to DESE for approval; and 3. Selectmen vote to approve plan/program
<p><b><u>Global Language</u></b>            This element of the WCSP provides after school instruction in Chinese Language and Culture and in and French and Spanish. The classes are offered at the kindergarten, elementary, and middle schools with several levels available to accommodate the beginner as well as the more advanced student.</p>	M.G.L. c.71, §26A,B,C	1. School Committee to adopt plan/program; 2. Plan/program submitted to DESE for approval; and 3. Selectmen vote to approve plan/program
<p><b><u>Tutoring</u></b>            Students who need special assistance outside of school hours may obtain instruction from teachers and tutors through this fee-based program.</p>	M.G.L. c.71, §26A,B,C	1. School Committee to adopt plan/program; 2. Plan/program submitted to DESE for approval; and 3. Selectmen vote to approve plan/program
<p><b><u>Enrichment</u></b>            Tutoring and/or activities after school in areas such as private music lessons, learning to knit, drama kids, chess wizards, and band are offered through the WSCP. This program also supports community education evening classes.</p>	M.G.L. c.71, §26A,B,C	1. School Committee to adopt plan/program; 2. Plan/program submitted to DESE for approval; and 3. Selectmen vote to approve plan/program
<p><b><u>Full Day Kindergarten</u></b>            Now in its fourth year, full day kindergarten continues on a fee basis for FY15. The sessions begin when the morning kindergarten ends and continues until 2:45 p.m. (1:35 p.m. on Wednesdays). There are five sections of full day kindergarten operating out of the three elementary schools.</p>	M.G.L. c.71, §26A,B,C	1. School Committee to adopt plan/program; 2. Plan/program submitted to DESE for approval; and 3. Selectmen vote to approve plan/program

<u>Account/Purpose</u>	<u>Statutory Reference</u>	<u>Special Town Meeting Action Required:</u>
<p><b><u>Building Use</u></b>            The School Committee may charge a rental fee to business and community organizations for the use of school facilities provided that such use will not interfere with educational programs. The rental fees collected are deposited in the building use revolving fund and may be spent without further appropriation.</p>	M.G.L. c.71, §71E	Vote to accept M.G.L. c.71, §71E

<p><b><u>Pegasus Summer Program</u></b>            Pegasus is a six-week summer program for children of all abilities, ages three through entering the Grade 8. The preschool and kindergarten children are provided with a variety of play-based activities. School-age participants focus on developing interests in a specialty area, such as: Performing Arts, Studio Art, Games Galore, Sizzling Science and Rockin' Robotics. In addition, children in grades 3-5 can enroll in TV production and specialized art options.</p>	M.G.L. c.71, §71E	Vote to accept M.G.L. c.71, §71E
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<u>Account/Purpose</u>	<u>Statutory Reference</u>	<u>Annual Town Meeting Action Required:</u>
<p><b><u>Professional Development and Curriculum</u></b>            These <u>two accounts</u> are used by professional staff to cover a portion of the costs related to continuing education of the faculty and enhancement of the Wayland Public Schools curriculum.</p>	M.G.L. c.44, §53E½	Vote to establish as a Departmental Revolving Account